

IN THE THIRD DISTRICT COURT OF APPEAL
STATE OF FLORIDA

JAMES ERIC MCDONOUGH,

Appellant,

v.

CITY OF HOMESTEAD,

Appellee.

Case No. 3D19-1362

Lower Case No. 19-06869 CA (15)

MOTION TO RELINQUISH JURISDICTION

Appellee, City of Homestead, by and through its undersigned counsel, hereby moves the Court to relinquish jurisdiction to the trial court for the purpose of holding a hearing pursuant to section 119.11(1), Florida Statutes.

1. This appeal arises from the trial court's entry of a Final Judgment Denying Mandamus Relief on April 17, 2019 ("Final Order").

2. The lawsuit arose from a public records request submitted to the City by appellant, James Eric McDonough, pursuant to Chapter 119, Florida Statutes (the "Public Records Request"). Mr. McDonough then petitioned the trial court for mandamus relief to compel the City to produce records responsive to the Public Records Request.

3. Following the trial court's entry of an alternative writ in mandamus, the City filed its answer, together with affidavits. Without a hearing, the trial court

then entered its Final Order, which stated that “[b]ecause no factual dispute exists regarding whether the City produced the non-exempt workers’ compensation leave records, the Court finds an evidentiary hearing unnecessary.”

4. Generally, in consideration of a petition for writ of mandamus, it is within the trial court’s discretion to decide whether there is “a contested issue requiring an evidentiary hearing.” *Major v. Hallandale Beach Police Dept.*, 219 So. 3d 856, 858 (Fla. 4th DCA 2017) (affirming the denial of a petition for writ of mandamus without a hearing and citing *Hollis v. Massa*, 211 So. 3d 266, 268 (Fla. 4th DCA 2017)).

5. Mr. McDonough asserts, however, in his initial brief (IB at 7-9) that in entering its Final Order without a hearing, the trial court overlooked section 119.11(1), Florida Statutes, which states that “[w]henEVER an action is filed to enforce the provisions of [Chapter 119], the court *shall* set an immediate hearing” § 119.11(1), Fla. Stat. (emphasis added).

6. While the City believes that the right result was reached by the trial court based on undisputed facts, in an abundance of caution, the City requests that the Court relinquish jurisdiction for sixty (60) days in order to allow the trial court to hold a hearing pursuant to section 119.11(1), Florida Statutes. Relinquishment

of jurisdiction to the trial court to hold the hearing will allow the trial court the opportunity to reaffirm or modify its holdings after conducting a hearing.¹

7. The City disputes Mr. McDonough's contention that he is entitled to an *evidentiary* hearing in the trial court. IB at 7. Section 119.11(1), Florida Statutes, does not mandate that an evidentiary hearing be held—merely that a hearing be held. If, as the trial court originally concluded, there are no disputed issues of fact, the trial court may simply hear the parties and leave its prior Final Order intact, thus returning jurisdiction of this cause to this Court.

8. The undersigned has contacted *pro se* appellant, James Eric McDonough, who has indicated that he does not agree to the Court's relinquishment of jurisdiction absent the City's agreement to conditions that are not required by Section 119.11, Florida Statutes. Specifically, Mr. McDonough responded that he would not object to the relinquishment of jurisdiction to the trial court to hold a hearing pursuant to section 119.11(1) *if* the City agreed to allow him to take three (3) depositions prior to the hearing.²

¹ The City believes that, in light of its production of all documents, the matter will be resolved in favor of the City.

² Section 119.11 is silent regarding whether discovery is appropriate prior to the hearing and, instead, merely states that the hearing shall be "immediate" and given "priority over other pending cases." §119.11(1), Florida Statutes.

WHEREFORE, appellee, City of Homestead, respectfully requests that the Court relinquish jurisdiction to the trial court for a period of 60 days to allow the trial court to hold a hearing pursuant to section 119.11(1), Florida Statutes.

Respectfully submitted,

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Counsel for City of Homestead

By: /s/ Matthew H. Mandel
Matthew H. Mandel

CERTIFICATE OF SERVICE

I certify that a copy of this notice was served via E-Mail, and by U.S. Mail on September 23, 2019, on James Eric McDonough, *pro se*, 32320 SW 199th Ave, Homestead, FL 33030, Email: Phd2b05@gmail.com.

/s/ Matthew H. Mandel
Matthew H. Mandel